

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

DON LIPPERT, et al.,) Docket No. 10 C 04603
Plaintiffs,) Chicago, Illinois
v.) May 3, 2019
JOHN BALDWIN, et al.,) 11:02 a.m.
Defendants.)

TRANSCRIPT OF PROCEEDINGS - Fairness Hearing
BEFORE THE HONORABLE JORGE L. ALONSO

APPEARANCES:

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1 (In open court.)

2 THE COURT: Good morning, everyone.

3 ALL COUNSEL: Good morning.

4 THE CLERK: All rise.

5 (Call to order.)

6 THE CLERK: 10 C 4603, Lippert vs. Ghosh.

7 THE COURT: Let's have the attorneys identify
8 themselves for the record.

9 MR. HIRSHMAN: Certainly. Harold Hirshman, Camille
10 Bennett, Alan Mills for the plaintiff class.

11 MR. FLETCHER: Christopher Fletcher from the Office of
12 the Attorney General for defendants. Along with me is
13 Mr. Nicholas Staley, Mr. Mike Arnold and representatives of the
14 Department of Corrections legal, and that is Camile Lindsay as
15 well as Ms. Kelly Presley.

16 THE COURT: Okay. Thank you. And we are here for
17 final fairness hearing on the proposed consent decree in this
18 case. I'll begin by granting Document No. 120. That's
19 plaintiffs' unopposed motion to file an oversized brief.

20 I'm aware of the defendants' recently filed response.
21 This is a joint motion, but the defense filed their memorandum
22 in support of final approval of the consent decree. That's
23 document 1232. I've reviewed that.

24 Are both sides ready to proceed?

25 MR. HIRSHMAN: We are, Your Honor.

1 MR. FLETCHER: We are, Judge.

2 THE COURT: Okay. And it is 11:04, and are the
3 parties -- is the plaintiff aware of any objectors that are
4 present here in the courtroom here today?

5 MS. BENNETT: Yes, Your Honor. Dr. Pliura, who
6 represents the putative class in the *Bryant* case, is here, and
7 also attorneys for Mr. Willie Dixon. And there may be one or
8 two others in the courtroom who we don't know about at the
9 moment.

10 THE COURT: Okay. Is the plaintiff taking a position
11 regarding whether members of the public have a right to
12 comment?

13 MS. BENNETT: Your Honor, I think we feel that anyone
14 who wishes to speak should speak.

15 THE COURT: Defense, any position on that?

16 MR. FLETCHER: No position, Your Honor.

17 THE COURT: Okay. And plaintiffs, any position
18 regarding Doctor and Counsel Pliura and attorney for Mr. Dixon?

19 MR. HIRSHMAN: We have no objection, Your Honor.

20 THE COURT: Okay. All right. So regardless of
21 whether or not non class members and theoretically anyone who's
22 present here is not in the class, regardless of that, without
23 reaching the issue of whether the public or a non class member
24 has a right to speak, I will afford those individuals the right
25 to do that.

1 I'll ask that whoever wants to comment step up to this
2 podium here on my right and begin by stating your name and
3 spelling your name for us. Let's begin that process right now.
4 Please raise your hand if you want to go first.

5 MS. ST. CLAIR: Good Morning, Your Honor. Sylvia
6 St. Clair, S-T period C-L-A-I-R, attorney of record for Willie
7 Dixon, D-I-X-O-N. Mr. Dixon has a case pending here in the
8 Northern District of Illinois, Case No. 17-CV-07304 captioned
9 Dixon vs. Dr. Salah Obaisi, et al., actually, before Your
10 Honor.

11 So I just want to make clear that I'm representing
12 Mr. Dixon in his pending case before Your Honor and not with
13 respect to his rights or obligations under the actual class
14 action suit.

15 But per my client's request, we are objecting on his
16 behalf, primarily because the pending action before Your Honor
17 in the other case alleges violations of his rights of his
18 Eighth and Fourteenth Amendments to the U.S. Constitution due
19 to defendants, which includes Wexford defendants as well as a
20 number of doctors, deliberate indifference to his serious
21 medical condition.

22 And specifically in his complaint, he is seeking
23 monetary damages and not equitable relief. And due to those
24 reasons, he has requested that we do place an objection on
25 record to the actual consent decree that Your Honor is

1 determining today during the fairness hearing.

2 THE COURT: Okay. Anything else regarding the
3 substance of that proposed consent decree?

4 MS. ST. CLAIR: No, Your Honor.

5 THE COURT: All right. And Ms. St. Clair, you have
6 made that objection on the record.

7 You're aware of the fact that the case you've
8 referenced is not up today. The case that's up today is this
9 case Lippert. Anything else?

10 MS. ST. CLAIR: No, your Honor, I guess other than
11 just to clarify for the record that Mr. Dixon's position is
12 that the consent decree that could be approved by Your Honor in
13 this particular case could actually affect his relief, which
14 includes the monetary damages, as well as him continuing to
15 seek medical relief for the treatment that he did receive.

16 However, there has been and continues to be delay in
17 his particular case.

18 THE COURT: Okay. Thank you, Counsel.

19 MS. ST. CLAIR: You're welcome.

20 THE COURT: Okay. Raise your hand, Counsel, Doctor.
21 State your name for the record.

22 MR. PLIURA: Yes. Attorney Tom Pliura, P-L-I-U-R-A.

23 Your Honor, we have filed a proposed class action down
24 in the Central District in Urbana in front of Judge Bruce. We
25 have filed a motion for class certification. The case name is

1 *Charles Bryant v. Wexford, et al.* It involves a class action
2 of inmates who have hernias or who had hernias and waited a
3 long time. We estimate the class to be about 4,000 inmates
4 inside the IDOC prison.

5 The reason I am here is because many of the inmates
6 received notice of this proposed settlement, and we wanted to
7 clarify that they oppose being held in any way or bound in any
8 way by this particular case. In that case in front of Judge
9 Bruce, the State, who is a defendant in this case, has filed a
10 motion to dismiss arguing that this proposed settlement would
11 bar our class action from proceeding down in the Central
12 District.

13 We disagree with that, but we think that there are
14 different legal issues. Certainly there's even a different
15 defendant. Wexford is a defendant in that case, not part of
16 this case. But we wanted to clarify that we do not believe
17 that our class of inmates with hernias would be bound or
18 affected by this particular case.

19 THE COURT: All right, Counsel. The motion before me
20 addresses your concerns. Any comment on the attorneys'
21 analysis or arguments regarding your objection?

22 MR. PLIURA: No, I don't think so.

23 THE COURT: Okay. And so you are objecting. You
24 don't believe the consent decree should be entered because of
25 the possible effect on your clients?

1 MR. PLIURA: I think -- I think we agree that the
2 consent decree in this case, an agreed settlement should move
3 forward.

4 What we want to clarify is we don't believe that our
5 particular plaintiffs in the class action should be bound in
6 any way from proceeding on their own particular claims of not
7 getting surgery for their hernias. So what we were requesting
8 both equitable relief down there, equitable remedies as well as
9 monetary damages in that case.

10 We support the proposed settlement in this case, but
11 we think that we would not be bound. What we don't want to do
12 is see this proceed and then -- and go to settlement and then
13 have the State, as they've argued in their motion to dismiss
14 down there, argue that, no, you guys are precluded from
15 proceeding in this case should -- our case in Urbana should be
16 dismissed because it falls under the guise of the Lippert
17 settlement. That's what we object to.

18 THE COURT: But, Counsel, you are not under the
19 impression that I'm going to rule on your issue --

20 MR. PLIURA: No.

21 THE COURT: -- or address your concern today?

22 MR. PLIURA: I'm not --

23 THE COURT: And that motion --

24 MR. PLIURA: -- not at all.

25 THE COURT: -- has already been filed and is pending.

1 MR. PLIURA: Not at all.

2 THE COURT: Okay.

3 MR. PLIURA: Thank you.

4 THE COURT: Next? Who wants to be heard? Who wants
5 to comment?

6 Going once, going twice. For the record, it's 11:12,
7 and no one else has stepped up to be heard from. So we did
8 hear from counsels Ms. St. Clair and Mr. Pliura, and at this
9 point I will close the time for comment.

10 That does not mean that we don't have comments. We
11 have plenty of comments and objections, and we will talk about
12 that within the framework of the motion that is pending, the
13 motion to grant the consent decree.

14 Ms. Bennett, any changes to the actual consent decree
15 that I was presented at preliminary approval?

16 MS. BENNETT: Your Honor, I actually unfortunately
17 have not had a chance to discuss this with defendants, but I
18 did notice one typographical error in a footnote.

19 THE COURT: The best kind of error, but an error
20 nonetheless.

21 And the final paragraph no longer is relevant
22 regarding efforts to resolve --

23 MS. BENNETT: Yes, Your Honor.

24 THE COURT: -- attorney dispute, attorney's fees.

25 MS. BENNETT: As the Court knows, we have reached

1 agreement, pending the Court's approval, on both the amount of
2 fees and of expenses and costs.

3 It's on page 8, Your Honor. It's footnote 1, and it
4 says the provisions of 3, that is, Section 3, which is
5 healthcare-specific provisions, are not intended to limit the
6 obligation expressed heretofore in Section 2, and it should be
7 "obligations" plural, rather than "obligation."

8 THE COURT: So I will at the end of the hearing, if
9 the motion's granted, I'll ask the plaintiff to present me with
10 an order, a more accurate and updated consent decree for me to
11 enter.

12 And any objection to including that change in
13 footnote No. 1 on page No. 8?

14 MR. FLETCHER: No, Judge.

15 THE COURT: Okay. The motion that is before me does a
16 good job of structuring the argument and laying out the
17 elements that I've got to consider under recently amended
18 Rule 23(e).

19 Ms. Bennett, are you going to take up the argument?

20 MS. BENNETT: Yes. I believe that what our plan is is
21 that I'm going to start. Mr. Hirshman and Mr. Mills are also
22 going to say a few words in support of the settlement and in
23 response to some of the other class member objections that
24 we've received.

25 Your Honor, the question before you is whether the

1 settlement is fair, reasonable and adequate under the rule, and
2 that really can only be considered in relation to what the
3 claims were in the case that it's settling and whether it
4 offers appropriate relief for the class members. We obviously
5 believe that it does.

6 The claims in this case have always been claims for
7 broad systemic reform, about broad systemic problems. And the
8 settlement is structured to address those claims and those
9 problems on the basis of quite a lot of information in this
10 case. It's been pending as a class action since the putative
11 class complaint was filed in 2011.

12 Probably the most important part of the settlement is
13 the structural changes that are supposed to be taking place at
14 the beginning. Some of the class members objected and, as did
15 Mr. Lippert himself, that the settlement has a time limit of 10
16 years. And that's a compromise obviously. We would have
17 preferred a longer time.

18 But in return for that, what the class gets is some
19 broad systemic changes that are supposed to start happening now
20 that are the foundation on which the settlement is going to
21 have to rest. The case in both of the Court-appointed experts
22 identified as one of the critical problems staffing, vacancies
23 and turnover.

24 The second Court-appointed expert said that there
25 wasn't even really a staffing analysis that he could find in

1 the Department of Corrections. So one of the things that
2 starts right now -- and, in fact, has already started -- is an
3 analysis of a staffing by the Department that is supposed to be
4 a foundation for this decree.

5 That actually is tied to the date of the appointment
6 of the monitors. Since Your Honor has already appointed the
7 monitor, that analysis is due in July.

8 Another thing that is supposed to happen at the outset
9 is, you know, attention to the physician credentialing.
10 Because the system can't function without doctors who are the
11 most critical healthcare providers in the system, who know, you
12 know, what they are seeing when a patient presents with a
13 problem and what the diagnosis should be and what the treatment
14 should be.

15 And both the person -- the Court-appointed and second
16 Court-appointed experts again identified that as a critical
17 problem. That problem is addressed up front with new physician
18 credentialing requirements that are effective as soon as the
19 decree is approved, if the Court approves it.

20 Other things that are structural that are happening at
21 the outset are attention to the medical records system. You
22 can't run a system like this without proper records and proper
23 data. There's a requirement in the decree that the defendants
24 must sign a contract for an electronic medical record. And
25 then within three years of that, they must have implemented it.

1 So that the disorganization of the medical records
2 that both of the Court-appointed experts spoke about over and
3 over again will finally be addressed. And indeed, defendants'
4 own expert, in the course of the case, had identified that as
5 the source of many of the problems that he saw.

6 Another thing which doesn't sound very glamorous but
7 which is critically important is a quality improvement system.
8 Again, both of the experts found that the system failed to
9 identify its problems, failed to correct its problems, didn't
10 even know about how to go about collecting the data to address
11 its problems.

12 There's now a contract in place between the Department
13 and the University of Illinois at Chicago Nursing School to
14 develop a quality -- a robust quality improvement system for
15 the Department that is supposed to be in place and to start
16 working soon, and there are many other requirements actually
17 within the consent decree pertaining to quality improvement.

18 So with all of these things and one more, which is a
19 system for review of the utilization management process which
20 determines what kind of outside specialty care the patients
21 get, that process to date has been solely within the control of
22 Wexford.

23 The consent decree puts oversight over that process.
24 Within six months, the Department is either supposed to
25 contract with an outside independent provider to review all of

1 those decisions, if they are denials of care or delays of care.

2 If they don't do that, then the monitor and his
3 consultants take over that job until two new State positions
4 are filled, which are Deputy Chiefs of Health Services, which
5 are supposed to undertake that review. So the kinds of
6 problems, for instance, that Mr. -- Dr. Pliura's patients are
7 facing should be addressed within the broad contours of the
8 settlement.

9 Now, this isn't to say that his clients don't have
10 other particular problems or that they should be precluded from
11 proceeding with their cases about their hernias. This isn't a
12 case about hernias. But there are structures in place at the
13 outset of the settlement to address the most severe
14 foundational problems that face the system here.

15 Now, we had an objection from Mr. Lippert, which the
16 Court may have seen.

17 THE COURT: 10 pages, yes.

18 MS. BENNETT: And he's -- I think one of the things
19 that shows he's really a very good class representative because
20 he's avidly followed the case, he's very familiar with the two
21 expert reports, and he's concerned about the settlement.

22 And I actually went down to see him at Lawrence
23 Correctional Center and asked him if he wanted us to try to
24 make him a bit -- you know, make it possible for him to speak
25 today. What he told me was that he thought that really his

1 objection was well laid out in those -- in those 10 pages.

2 His objection was that there are a couple hundred
3 specific recommendations in both the first and the second
4 expert reports, and those really should be all in the
5 settlement in detail, in specific detail.

6 And so, you know, the question is from -- you know, as
7 to Mr. Lippert, why isn't that a good idea? Why would we agree
8 to something that doesn't include that? And, you know, part of
9 that is simply that I don't think the defendants would have
10 agreed to that. I don't think they would have thought that
11 they could do all of those things right now.

12 There's a section of 68 of these specific requirements
13 that are in the settlement which they did agree to, which, you
14 know, are things that we believe that they believe that they
15 can immediately implement. But the more important reason it
16 isn't structured this way is that it's a system reform case.

17 And if you have a laundry list of 200 things, the
18 question is where to start and what's most important. And what
19 the consent decree here does is start with some critically
20 important foundational things that are going to get moving now.
21 It also has the 68 requirements in the healthcare-specific
22 provisions that are also, for the most part, to start now.

23 And then there are a host of broad areas in the
24 healthcare general provisions, which are going to be worked out
25 in the implementation plan which the Department is going to

1 develop with the help of the monitor, who is also, of course, a
2 very important part of the settlement here.

3 And in this way, the reform here which is -- has to be
4 profound because the problems are profound can be sort of
5 staged over time and done in a way that is actually, from the
6 point of view of the agency that has to do it, sustainable and
7 workable.

8 And so that's why we don't have a laundry list of 200
9 things. We have a staged process of critical elements at the
10 start, some specific elements, and broad commitments that are
11 to be undertaken and spelled out in the implementation plan,
12 which is going to become part of the consent decree.

13 So that -- that is how the settlement will address the
14 profound systemic problems that were identified in the course
15 of this case and by the experts.

16 THE COURT: All right. Thank you, Ms. Bennett. I'll
17 take that as an opening statement. I do want to at some point
18 get back to addressing the requirements of 23(e), and I think
19 that the plaintiff has done a good job of structuring their
20 argument. So I'm going to use that to make sure that I address
21 all of the factors that I have to address. I will try to keep
22 us organized in that fashion.

23 That being said, Ms. Bennett raised a couple of issues
24 that I want to address right now. One is the sunset provision,
25 the 10-year limit, and the objections dealing with that. Those

1 go to the substance as opposed to many of the objections which
2 don't go to what we actually have to decide today. That does
3 go to the substance of the consent decree.

4 And I will say that I believe that that 10-year limit
5 is consistent with our authority, our limited authority under
6 the PLRA, which those objectors did not take into account. But
7 I will say that there is a mechanism in place to extend it.

8 But just as importantly, I will say that I think it's
9 a good idea. It's a good idea to have this time limit. I
10 think it is a good idea in terms of an incentive for the agency
11 to get done what it needs to get done with an eye towards
12 wrapping the case up as opposed to having a case that goes on
13 for decades, and there are multiple cases that have taken that
14 track.

15 And I think it's counterproductive, as the government
16 doesn't see the end of it, and is therefore not incentivized to
17 move forward and to wrap up the case, which is, of course,
18 something I want to do and the plaintiffs want to do, also.

19 MR. HIRSHMAN: I should add one point, Your Honor,
20 which is that was a heavily negotiated provision of the
21 settlement agreement.

22 So it was not originally 10 years, and the defendants
23 insisted on a sunset. We agreed to a sunset. And so I think
24 that it serves the very functions Your Honor has just
25 articulated.

1 THE COURT: All right. So I agree, and again, it's
2 consistent with 18 U.S.C. 3626 and a good idea.

3 Ms. Bennett also mentioned Mr. Lippert. Mr. Lippert
4 filed one of many written objections, longer than most. He, of
5 course, is a named plaintiff in the case. I've considered his
6 objection. And I agree with the plaintiff. I agree with
7 Ms. Bennett's argument.

8 There is no need for the consent decree to
9 specifically enumerate every possible problem or every specific
10 problem that the experts found in the two reports, and I
11 believe that to do that could be counterproductive. It would
12 make this consent decree much more difficult to administer, and
13 it would give the parties much less flexibility going forward.

14 So as Ms. Bennett described it, we have a consent
15 decree that envisions staged relief, and I think it makes
16 perfect sense. I think it's as specific as it needs to be and
17 must be and should be on the front end, but it envisions
18 evolution and flexibility going forward, specifically with the
19 creation and the addition of the implementation plan.

20 And Ms. Bennett also mentioned that, and I think it's
21 important, as the plaintiff argues that the agency that's going
22 to be in charge of administering this process have an
23 opportunity to craft it for many reasons including their
24 expertise.

25 Of course, it's going to be with the help and the

1 direction of Dr. Raba. Raba or Raba? I forget.

2 MR. HIRSHMAN: Raba.

3 THE COURT: Raba.

4 But I think it's important in terms of buy-in, also.

5 It's important that they create it, they craft it with help, so
6 that there immediately is buy-in, that they believe this is a
7 good idea. And if we don't have that buy-in, we will have a
8 frustrating and adversarial application of the consent decree
9 going forward, which, of course, we do not want.

10 Okay. Anything from the defense, Mr. Fletcher, before
11 we get more specific about the rule and the requirements of the
12 rule?

13 MR. FLETCHER: Not at this time, Judge. Thank you.

14 THE COURT: All right. Mr. Hirshman?

15 MR. HIRSHMAN: Yes, Your Honor. Turning to 23(e)(2),
16 a settlement is to be -- the Court may approve a settlement
17 only after a hearing, which is what we're here for today, and
18 only with a finding on fair, reasonable and adequate is made.

19 I don't think that there's any doubt that there has
20 been adequate representation of this class over the
21 approximately 10 years the case has been pending.

22 THE COURT: The case -- the case is not the typical
23 case, and many of the requirements of 23(e) don't fit our fact
24 scenario here and the specifics of this very complex action.
25 But we're going to address all of them, and you are addressing

1 class representatives and class counsel representation, the
2 adequacy of it?

3 MR. HIRSHMAN: Yes, Your Honor.

4 And I think that, you know, the evidence in the record
5 is that there were numerous depositions. There were days of
6 negotiations. There were two expert reports based on orders of
7 Your Honor.

8 And so the allegations of the original complaint and
9 the original class action complaint were plumbed to reach a
10 conclusion. We filed more than 200 pages of proposed findings
11 and based on our review of numerous documents and the
12 depositions that were taken.

13 So as to the class representatives, you know, they
14 paid attention, as you can see from Mr. Lippert. And so we
15 believe that that is -- that provision (a) is fully met.

16 THE COURT: Mr. Ruffin also exhibited proof that he
17 was following, right? He filed an objection, then he withdrew
18 the objection?

19 MR. HIRSHMAN: Yes.

20 THE COURT: Okay. I agree that this factor weighs in
21 favor of approving the consent decree. As counsel writes,
22 counsel have spent thousands of hours investigating the facts
23 of the case, conducted extensive other factual and legal
24 research, propounded discovery requests, drafted pleadings,
25 motions and brief -- briefs and deposed numerous IDOC and

1 Wexford personnel.

2 And as you suggest, Mr. Hirshman, perhaps the issue of
3 the opinions of counsel should be wrapped up in this -- in this
4 factor also regarding your knowledge and experience --

5 MR. HIRSHMAN: Yes.

6 THE COURT: -- of the attorneys?

7 MR. HIRSHMAN: Yes, Your Honor.

8 Mr. Mills, Ms. Bennett, me and the ACLU itself has had
9 a great deal of experience with class action -- class actions
10 of this kind and settlements. And we are all uniformly of
11 the view that the speediest way and the surest way to attempt
12 to achieve a change in the system was through a settlement and
13 that this settlement, while like all settlements, not
14 everything that the plaintiffs might have wanted or even might
15 have achieved after trial is a better way to resolve the claims
16 here than to go through the trial process.

17 Simply, Your Honor was going to have trial at the end
18 of December, then in January. And in my judgment, we would
19 still be briefing the results of the hearings at this time. We
20 would not be near a resolution or a final order, and, of
21 course, that order would be subject to appeal.

22 So the delivery of real change would be delayed a
23 minimum of a year or so. Then that assumes, of course, that we
24 would prevail.

25 THE COURT: The defense still denies that there were

1 Constitutional violations.

2 MR. HIRSHMAN: Yes.

3 THE COURT: So even if you were successful, this has
4 taken years off of the --

5 MR. HIRSHMAN: Correct.

6 THE COURT: -- delivery of these services and these
7 reforms.

8 MR. HIRSHMAN: And so the class would continue to
9 suffer the injuries we believe they're suffering, and this is a
10 way to speed up the alleviation of those injuries.

11 And I think profoundly it permits, as Your Honor said,
12 for the Department to have a kind of buy-in to the solution
13 that might not come in a litigated situation. So for all of
14 those reasons, we firmly support the settlement as an optimum
15 resolution of this situation.

16 THE COURT: All right. So I believe that the approach
17 that's been adopted recently by some of the judges here that is
18 suggested in the brief is a persuasive one; that is, to fold
19 this factor, opinions of competent counsel, into the adequacy
20 of representation requirement. And it weighs, again, in favor
21 of approving the consent decree.

22 Moving on to the next factor, the proposed settlement
23 was negotiated at arm's length. I think an understatement in
24 this case, Mr. Hirshman. How many days before trial?

25 MR. HIRSHMAN: Yes, Your Honor. And I think that

1 Magistrate Judge Cox certainly opined to us that it had been
2 a -- as she had actually at one point in October given up on
3 the idea that this case could be resolved through settlement,
4 ended the -- what's wrong with me? -- the referral to her and
5 sent the case back to Your Honor.

6 We stood here, and the defendant said that they
7 thought it might be useful to renew the settlement discussions.
8 I was pessimistic, but Your Honor accepted the proposition that
9 it might be returned to Magistrate Judge Cox for further
10 effort, and that effort turned out to be fruitful.

11 I don't think there's any -- anyone who can say that
12 these negotiations weren't at arm length, and there's no
13 evidence of it and it is simply counterfactual.

14 THE COURT: Mr. Fletcher, anything regarding that?

15 MR. FLETCHER: No. I echo the sentiment that these
16 negotiations were at arm's length, and I appreciate that the
17 Court recognizes that we continue to deny that we have provided
18 Constitutionally inadequate care.

19 THE COURT: All right. Again, as I stated, this is an
20 understatement in this case. The case is docketed as a 2010
21 case. The class complaint was filed in 2011, and the parties
22 have spent countless hours on the case, including countless
23 hours negotiating the case itself.

24 It was not settled until a handful of days before the
25 trial was to commence. And I would be remiss if I didn't

1 acknowledge the hard work of Judge Cox, without whom I don't
2 believe the case would have been settled. She put a lot of
3 work into it. And it's important to mention in a different
4 context Judge Martin, who spent many, many years on this case,
5 perhaps not directly in the settlement context, and
6 unfortunately, he wasn't with us at the end.

7 But he, of course, is responsible to a large degree
8 with getting us to where we are today, and I would be remiss if
9 I didn't mention that for the record, also.

10 MR. HIRSHMAN: Absolutely, Your Honor.

11 THE COURT: Okay. So this obviously is a factor that
12 weighs in favor of approving the consent decree. Another way
13 to put it, as we say these days, no collusion, right?

14 The next factor, you skipped one to -- you skipped the
15 adequacy, which is arguably the more important or the most
16 important of the factors to address, the proposed settlement
17 treats class members equitably with respect to each other. And
18 this is one of the factors that is clumsy in the context of the
19 specific facts of this case.

20 MR. HIRSHMAN: Yes, Your Honor. Obviously the purpose
21 of the settlement is to achieve a system, and the system is
22 available to all prisoners who are ill. And so there won't be
23 any kind of special -- special care given to, for instance, the
24 named plaintiffs or anyone else, for that matter. And so I
25 don't think that that factor is really relevant in this

1 analysis.

2 THE COURT: All right. Regardless of whether that's
3 the correct analogy or not or the correct approach, that it's
4 not relevant, I think it's clear here, as you write, that the
5 same injunction is applicable to all class members.

6 The class was defined as all prisoners in the custody
7 of IDOC with serious medical or dental needs. And so again, an
8 awkward fit with our case, but a factor that does weigh in
9 favor of approval and entry of the consent decree.

10 And now regarding adequacy, the relief granted by the
11 proposed settlement is adequate in your opinion, and there are
12 multiple factors here including the old, if you will, Seventh
13 Circuit factors.

14 MR. HIRSHMAN: Yes, Your Honor. I mean, one way to
15 look at adequacy is to look at the original complaint and look
16 at the problems that were posed and to ask yourself whether the
17 settlement consciously addresses those issues and has a method
18 or methodology for resolution.

19 And I think the answer, as Ms. Bennett pointed out,
20 tees off of the fact-finding of the two experts that Your Honor
21 appointed. So we're not in a situation where the system itself
22 hasn't been examined. It has been examined. And then there
23 was a systematic attempt to create a structure which would
24 solve or address the problems of healthcare.

25 And so in that sense, we are addressing the notion of

1 adequacy. Obviously, this isn't a monetary damage case, and
2 the proof will be in the eating; that is to say, as the system
3 evolves under the guidance of the Court-appointed expert and
4 with the cooperation of the State.

5 But the plan, the method you set out in the agreement,
6 the goals are set out in the agreement, and I think under those
7 circumstances, we have what has historically been a more than
8 adequate solution to a problem. Many, many solutions that are
9 less comprehensive have clearly been approved as adequate.

10 THE COURT: So in the big picture, basically from the
11 plaintiffs' standpoint, you were able to get a commitment for a
12 plan of comprehensive reform that addresses the concerns of the
13 experts?

14 MR. HIRSHMAN: Yes.

15 THE COURT: Okay. And in terms of the specific
16 factors, the strength of the class' case, Mr. Hirshman, we
17 talked about that a little bit. No guarantees, but you feel
18 that the class did have a strong case.

19 You touched on the complexity and the expense of
20 further litigation, at least on the issue of how much time and
21 how many resources that would entail, and that is assuming that
22 you were successful.

23 We talked about the opinions of competent counsel. We
24 talked about the stage of the proceedings and the amount of
25 discovery that was completed. One way to encapsulate that

1 again was the number of pages that were prepared in terms of
2 statement of facts.

3 MR. HIRSHMAN: Yes, Your Honor.

4 THE COURT: And now is a good time to talk about the
5 amount of the opposition and the reaction of the class. And I
6 should state that notice to the class, you have used the figure
7 of approximately 40,000 inmates --

8 MR. HIRSHMAN: Correct, Your Honor.

9 THE COURT: -- in IDOC.

10 And in terms of notice, I don't believe that there
11 were any restrictions. Obviously those 40,000 are not our
12 class, but you made no attempt to limit notice.

13 MR. HIRSHMAN: No, your Honor. We actually I think
14 provided a notice structure that was more than called for.
15 Each prisoner was delivered an individual sheet describing the
16 settlement. In addition, the dayrooms in the various prisons
17 had the notice posted.

18 And I think if Your Honor went through the various
19 objections, we could see that there were objections, I believe,
20 from every prison or at least almost every prison, which is a
21 way to test whether the whole class of prisoners received
22 notice.

23 THE COURT: That is a good point.

24 MR. HIRSHMAN: So, you know, in addition, you know,
25 that --

1 THE COURT: Again, when you say to all of them, what I
2 was trying to express was that you were not trying to restrict
3 notice to only people who were inmates with serious medical or
4 dental needs. All 40,000 were aware. All 40,000 were free to
5 object.

6 And all of those objections have been considered by me
7 and addressed by you in your admittedly imperfect attempt to
8 categorize and sort those objections.

9 MR. HIRSHMAN: Yeah. And I really think that without
10 casting aspersions on the objectors themselves, they really do
11 not bring forward the kind of objections which are called for
12 under Rule 23 and which would cast doubt on this settlement.

13 Mostly they are either individual complaints about
14 concerns about their own cases or saying we should have
15 negotiated a different settlement than we were able to achieve.
16 But that isn't the test of a complaint. Instead, it's the
17 factors that we're talking about and we've just addressed about
18 about reasonableness, fairness, adequacy and risk.

19 And of course, none of the objectors assess anything
20 with respect to risk. So from a kind of a 30,000-foot view of
21 all of the objections, they are simply not legally cognizable
22 as objections.

23 That doesn't mean we didn't address them. We did.
24 But I do not believe that they would stand as an impediment to
25 Your Honor's approval of the class, of the settlement.

1 THE COURT: And, Mr. Hirshman, you also write that
2 despite the fact that we've got admittedly a lot of objections,
3 we've got about 400 objections, that still speaks to support
4 from the class.

5 MR. HIRSHMAN: Yes, it does, Your Honor. I predicted
6 a thousand, so I was surprised that we only reached 400. It
7 sounds like a lot, but it is 40,000 class members.

8 And in addition, we know that at least some of the
9 class members do spend some time tending to legal affairs. So,
10 you know, the idea that it's only -- it's less than or
11 approximately one percent of the class is -- has historically
12 been looked at as evidence that it is a fair settlement as
13 well.

14 THE COURT: All right. Anything, Mr. Fletcher, from
15 the defense regarding the objections?

16 MR. FLETCHER: No, your Honor.

17 THE COURT: All right. I will -- let me talk about
18 those a little bit here. We've got all of those objections.
19 Again, the plaintiff did an admirable job of imperfectly
20 sorting and organizing those and sticking them into or placing
21 them into different buckets.

22 I believe you came up with 13 broader categories.
23 Most of those are clearly not relevant to today's task. Those
24 that were looking for financial compensation, clearly not
25 relevant. Others who were pursuing individual cases, including

1 Mr. Dixon, again, not any reason to cast doubt on the
2 appropriateness of entering the consent decree.

3 I did address the issue regarding the sunset
4 provision, which is relevant but not persuasive. I've
5 considered those. I'll note that there was no need for those
6 objections to be filed as motions, but we have about 20 motions
7 which I'll deal with now. 20 motions that were given different
8 names, when in reality they're objections. I'm going to
9 construe them as objections.

10 They are labeled alternatively motions to withdraw,
11 motions to opt-out, motions to object, motions for certificate
12 of opt-out, a couple of motions for extensions of time. Again,
13 they're going to be deemed as objections, and they have been
14 considered and reviewed.

15 And for the record, those are 816, 831, 832, 980, 981,
16 983, 1031, 1032, 1084, 1093, 1109, 1111, 1114, 1135 and 36,
17 1165, 1171, 1221, 1223 and 1226. They are being construed as
18 objections and are, therefore, being denied as moot. In fact,
19 those individuals did not have standing to file motions, but
20 again, they were considered, but considered as objections.

21 So whether they are on point, whether they provide a
22 basis to deny the motion or not, many of them were thoughtful
23 and insightful, and they did raise important issues. But
24 ultimately, I agree with the analysis that is contained in the
25 motion and find that most of them are not relevant, and none of

1 them provide a basis to cast doubt on the appropriateness of
2 entering the proposed consent decree.

3 MR. HIRSHMAN: Your --

4 THE COURT: And I will agree with the plaintiff that
5 ultimately, despite the high number of objections, it still
6 represents only one percent of the 40,000, approximately 40,000
7 prisoners who received or who were the targets of notice, and
8 we did receive objections from all over the state.

9 Some of the objectors raised concern about these
10 changes not happening sooner, but I believe that the structure
11 of the consent decree makes perfect sense based upon the
12 incredibly broad and complex nature of the reform and agree
13 that there are strong considerations here of comity and a need
14 to provide the State and the agency with an opportunity to
15 craft the implementation plan and that that staged approach to
16 reform is necessary and appropriate in this case.

17 All right. Mr. Hirshman, anything else today, sir?

18 MR. HIRSHMAN: I think that, you know, one of the
19 factors under (c), the effectiveness of any proposed method of
20 distributing relief to the class here is not germane because,
21 you know, this is an equitable class. And we have a structure
22 for delivering the relief, and there are no individual class
23 claims. So that would be more germane to a damage class, which
24 obviously we don't have.

25 The proposed award of attorneys' fees, the attorneys'

1 fees were capped by the Prison Litigation Reform Act so that
2 the rates are significantly below the rates that would be
3 common in the marketplace for lawyers of the caliber of my
4 colleagues. And, of course, there was agreement from the
5 defendants that the fees were reasonable, and we actually
6 reduced them somewhat in the course of negotiation.

7 And the same with the costs. We provided support for
8 both the fees and the costs, and we reached agreement on that.
9 None of that was negotiated until after the terms of the
10 settlement were worked through. So there was no inducement to
11 abandon the class' interests in the interests of the lawyers
12 which is --

13 THE COURT: It was a totally separate issue, and it
14 was dealt with after all of the other agreements were reached?

15 MR. HIRSHMAN: Correct.

16 And I don't know of any other agreements that were
17 necessary to consider under 23(e)(3). So in my judgment and
18 certainly in my opinion, the settlement is fair, reasonable and
19 adequate under Rule 23.

20 THE COURT: All right. Mr. Fletcher, Mr. Staley
21 writes that, "Defendants do agree that it is in the best
22 interests of the parties and the class members that this matter
23 be resolved by the entry of the consent decree that has been
24 proposed to the Court."

25 Also you write that, "All of the factors to be

1 considered under FRCP 23(e) favors settlement in this
2 instance."

3 MR. FLETCHER: Yes, Judge.

4 THE COURT: Anything else from the defense?

5 MR. FLETCHER: No, Judge.

6 THE COURT: All right. The joint motion is going to
7 be granted. I'm going to grant final approval of the consent
8 decree. I do find that all of the factors that I have to
9 consider under Rule 23(e) favor settlement in this instance and
10 favor entry of the consent decree as proposed.

11 So accordingly, I will grant final approval of the
12 consent decree and hereby find that the consent decree is a
13 fair, reasonable and adequate resolution as required under
14 23(e) of the Federal Civil Rules of Procedure. I will grant
15 the unopposed motion and enter the proposed consent decree
16 that, as amended, will be presented to me.

17 I believe that the consent decree represents a
18 sweeping overhaul. It's a real accomplishment. It's a very
19 important day. It's been a long day coming. I commend the
20 parties. I commend the attorneys from both sides for their
21 hard work over many years and believe that this is nothing
22 short of a commitment for comprehensive reform. It's an
23 important day.

24 And, of course, even though it's been a long time
25 coming, it is just the beginning. So it is a beginning of what

1 will also be a long-term project, an ongoing project, but I
2 believe that this consent decree is specific enough, but
3 flexible enough regarding the substance and regarding the
4 structure.

5 Of course, one important component here is the
6 monitor, and I have no doubt that he is up to the task. So
7 thank you to everyone who's involved in this process. Thanks
8 for your hard work and your cooperation and your willingness to
9 continue to work towards this resolution. I will enter that
10 order, and from the plaintiffs' perspective, Mr. Hirshman, what
11 is next in terms of --

12 MR. HIRSHMAN: I believe Your Honor has to enter an
13 order with respect to costs and fees.

14 THE COURT: That motion is No. 1228. That motion is
15 granted. That also is an unopposed motion to award fees and
16 costs.

17 I find, as the defendant does, that these are
18 reasonable and that they have all been documented. And again,
19 it was an agreement that was reached apart -- fully apart from
20 the settlement and the consent decree, and it is reasonable in
21 all respects.

22 MR. HIRSHMAN: Thank you, Your Honor.

23 THE COURT: Thank you for the sacrifices of
24 plaintiffs' counsel on that end.

25 MR. HIRSHMAN: And we appreciate the Court's time in

1 all aspects of this matter. Thank you.

2 THE COURT: Thank you. Do we need a next court date
3 at this point?

4 MR. HIRSHMAN: I don't think so, Your Honor.

5 THE COURT: I'll ask the plaintiff to -- after
6 conferring with the defense to submit an updated consent decree
7 for me to enter on Monday.

8 MR. HIRSHMAN: Certainly.

9 THE COURT: All right. Anything else today?

10 MR. FLETCHER: Nothing from the defendants. Thank
11 you, Judge.

12 THE COURT: Thank you. All right. Court is in
13 recess.

14 (Concluded at 12:01 p.m.)

15 * * * * *

16 C E R T I F I C A T E

17 I certify that the foregoing is a correct transcript of the
18 record of proceedings in the above-entitled matter.

19

20 /s/ LISA H. BREITER June 3, 2019
21 LISA H. BREITER, CSR, RMR, CRR
Federal Official Court Reporter

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